

APPEAL NO. 023200
FILED FEBRUARY 12, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on November 20, 2002. The hearing officer determined that the respondent/cross-appellant (claimant) sustained a compensable injury on _____; and that the claimant had disability secondary to a compensable injury from August 12 through September 11, 2002. The appellant/cross-respondent (carrier) appeals those determinations. The claimant also appeals, contending that his disability continued until November 25, 2002. The carrier responds to the claimant's appeal, asserting that disability, if any, ended on September 11, 2002.

DECISION

Affirmed in part and reversed and remanded in part.

Whether the claimant sustained a compensable injury is a factual question for the hearing officer to resolve. The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence, as well as the weight and credibility that is to be given to the evidence. Section 410.165(a). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We have reviewed the matters complained of on appeal and conclude that the hearing officer's decision is supported by sufficient evidence. We affirm that portion of the decision and order of the hearing officer that the claimant sustained a compensable injury on _____.

The claimant attempts to introduce new evidence that was not entered into evidence at the CCH. The review of the Appeals Panel is generally limited to the record developed at the hearing. Section 410.203. In determining whether new evidence submitted with an appeal requires remand for further consideration, the Appeals Panel considers whether the evidence came to the knowledge of the party after the hearing, whether it is cumulative of other evidence of record, whether it was not offered at the hearing due to a lack of diligence, and whether it is so material that it would probably result in a different decision. See Texas Workers' Compensation Commission Appeal No. 93536, decided August 12, 1993. Under these circumstances, we conclude that the attached document meets the criteria for requiring a remand and we remand so that the hearing officer may consider the new evidence, (the December 12, 2002, letter from the claimant's treating doctor), with respect to the claimant's period of disability.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision

must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

The true corporate name of the insurance carrier is **LUMBERMENS MUTUAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Roy L. Warren
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge